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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**

**CENTRAL DIVISION**

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<b>HEIDI DAVIS,</b>  <b>Plaintiff,</b>  <b>v.</b>  <b>RESORTS WEST, LLC,</b>  <b>Defendant.</b>	<b>MEMORANDUM DECISION AND ORDER AND SECOND AMENDED SCHEDULING ORDER</b>  <b>Case No. 2:15-cv-398-DB-PMW</b>  <b>District Judge Dee Benson</b>  <b>Magistrate Judge Paul M. Warner</b>
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District Judge Dee Benson referred this case to Magistrate Judge Paul M. Warner pursuant to 28 U.S.C. § 636(b)(1)(A).<sup>1</sup> Before the court is Resorts West’s (“Defendant”) motion to amend the Amended Scheduling Order.<sup>2</sup> The court has carefully reviewed the written memoranda submitted by the parties. Pursuant to civil rule 7-1(f) of the Rules of Practice for the United States District Court for the District of Utah, the court has concluded that oral argument is not necessary and will determine the motion on the basis of the written memoranda. *See* DUCivR 7-1(f).

On February 3, 2016, the court issued the original Scheduling Order in this matter with a trial date of May 15, 2017.<sup>3</sup> On September 22, 2016, the court granted the parties’ joint motion

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<sup>1</sup> *See* docket no. 23.

<sup>2</sup> *See* docket no. 28.

<sup>3</sup> *See* docket no. 17.

to amend the scheduling order and issued an Amended Scheduling Order that extended some deadlines for thirty days but left the trial date in place.<sup>4</sup>

Defendant has now filed the instant motion to amend the Amended Scheduling Order, requesting that this court extend the remaining dates, including the trial date, by an additional sixty days. Defendant notes that the parties have a mediation scheduled for January 23, 2017, and asserts that continuing to engage in expert discovery prior to mediation may be a waste of time and resources. Heidi Davis (“Plaintiff”) opposes Defendant’s motion on the grounds that Defendant has not demonstrated good cause for the amendment. Plaintiff also contends that this motion is nothing more than a prejudicial delay tactic. Specifically, Plaintiff argues that Defendant has purposefully failed to promptly return phone calls regarding the scheduling of mediation and that Defendant’s choice of the very last date offered by the mediator was part of an overall strategy to delay this matter. Plaintiff indicates that she has repeatedly informed Defendant that she does not want to extend the trial date.

Under rule 16(b)(4) of the Federal Rules of Civil Procedure, a scheduling order may be modified “only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). The court considers the following factors in determining whether to amend the scheduling order:

1) whether trial is imminent, 2) whether the request is opposed, 3) whether the non-moving party would be prejudiced, 4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court, 5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and 6) the likelihood that the discovery will lead to relevant evidence.

*Smith v. United States*, 834 F.2d 166, 170 (10th Cir. 1987). The court concludes that these factors weigh in favor of amending the scheduling order and that Defendant has demonstrated good cause for the amendment. In particular, while Plaintiff opposes the request, she has failed

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<sup>4</sup> See docket no. 20-1.

to explain how she will be prejudiced by this minor extension. In addition, because the parties are scheduled for mediation later this month, the court concludes that it is in the interests of judicial economy to amend the scheduling order.

Based on the foregoing, the court **GRANTS** Defendant's Motion to Amend the Amended Scheduling Order. The Second Amended Scheduling Order is set forth as follows:

Rule 26(a)(2) Counter Reports from Experts	2/28/2017
Expert Discovery Deadline	3/31/2017
Dispositive Motion Deadline	3/17/2017
Motion to Exclude Expert Testimony	3/17/2017
Rule 26(a)(3) Pretrial Disclosures Plaintiff Defendant	6/16/2017 6/30/2017
Special Attorney Conference on or before	7/17/2017
Settlement Conference on or before	7/17/2017
Final Pretrial Conference	8/7/2017 at 2:30 p.m.
Jury Trial (10 days)	8/21/2017 at 8:30 a.m.

**IT IS SO ORDERED.**

DATED this 6th day of January, 2017.

BY THE COURT:



PAUL M. WARNER  
United States Magistrate Judge